

355.9-513A Termination of wrongfully filed record -- Reinstatement.

- (1) No person shall communicate a financing statement to a filing office for filing which is:
 - (a) Not authorized or permitted under KRS 355.9-509 or 355.9-708;
 - (b) Not related to a valid existing or potential commercial or financial transaction; and
 - (c) Filed with the intent to harass, hinder, or defraud a qualified person identified as an individual debtor in the financing statement.
- (2) A qualified person may file in the office of the Secretary of State's Division of Business Filings a notarized affidavit, signed under penalty of perjury, stating that:
 - (a) The affiant is a qualified person;
 - (b) None of the secured parties of record are financial institutions as defined in subsection (15) of this section;
 - (c) All secured parties of record are individuals; and
 - (d) The financing statement was filed by an individual not authorized or permitted to do so under KRS 355.9-509 or 355.9-708.
- (3)
 - (a) The Secretary of State shall adopt and make available a form of affidavit for use under this section.
 - (b) The filing office shall not charge a fee for the filing of an affidavit or a termination statement under this section. The filing office shall not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is subsequently reinstated.
 - (c) In a case in which KRS 355.9-501 provides that the proper office to file a financing statement is the office designated for the filing or recording of a record of a mortgage on real property, the Secretary of State shall promptly transmit to that office copies of all communications regarding an affidavit filed under this section, including the affidavit itself, any termination statement filed under subsection (4) of this section, and any amendment filed or preliminary or final court order received pursuant to subsection (7) or (8) of this section, and upon receipt the receiving office shall execute the actions described herein.
- (4) If an affidavit is filed under subsection (2) of this section, the filing office shall promptly file a termination statement with respect to the financing statement identified in the affidavit. The termination statement shall indicate that it was filed pursuant to this section. Except as provided in subsections (7) and (8) of this section, a termination statement filed under this subsection shall take effect thirty (30) days after it is filed.
- (5) On the same day that a filing office files a termination statement under subsection (4) of this section, it shall send to each secured party of record for the financing statement a notice advising the secured party of record that the termination statement has been filed. The notice shall be sent by certified mail, return receipt requested, to the address provided for the secured party in the financing statement.

- (6) An individual indicated as a secured party of record on a financing statement for which a termination statement has been filed under subsection (4) of this section may, before or after the termination statement takes effect:
 - (a) Request from the Secretary of State an expedited administrative review of the decision to terminate the filing; or
 - (b) Bring an action against the individual who filed the affidavit under subsection (2) of this section seeking a determination that the financing statement was filed by a person entitled to do so under KRS 355.9-509(1). An action under this subsection shall have priority on the court's calendar and shall proceed by expedited hearing. If the individual who filed the affidavit resides in this state, the exclusive venue in this state for the action shall be in the Circuit Court for the county where the individual principally resides in this state. If the individual who filed the affidavit does not reside in this state, the exclusive venue in this state shall be in the Circuit Court for the county where the filing office in which the financing statement was filed is located.
- (7) In an action brought pursuant to subsection (6) of this section, a court may, in appropriate circumstances, order preliminary relief, including but not limited to an order precluding the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. If the court issues such an order and the filing office receives a certified copy of the order before the termination statement takes effect as provided in subsection (4) of this section, the termination statement shall not take effect and the filing office shall promptly file an amendment to the financing statement that indicates that an order has prevented the termination statement from taking effect. If such an order ceases to be effective by reason of a subsequent order or a final judgment of that court or by an order issued by another court, and the filing office receives a certified copy of the subsequent judgment or order, the termination statement shall become immediately effective upon receipt of the certified copy and the filing office shall promptly file an amendment to the financing statement indicating that the termination statement is effective.
- (8) If the Secretary of State determines in an expedited administrative review initiated under subsection (6)(a) of this section, or if a court determines in an action brought pursuant to subsection (6)(b) of this section, that the financing statement was filed by a person entitled to do so under KRS 355.9-509(1) and the filing office receives a certified copy of the administrative determination or court's final judgment or order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall remove the termination statement and any amendments filed under subsection (7) of this section from the files. If the filing office receives the certified copy after the termination statement takes effect and within thirty (30) days after the final judgment or order was entered, the filing office shall promptly file an amendment to the financing statement that indicates that the financing statement has been reinstated.
- (9) Except as provided in subsection (10) of this section, upon the filing of an amendment reinstating a financing statement under subsection (8) of this section,

the effectiveness of the financing statement is retroactively reinstated and the financing statement shall be considered never to have been ineffective against all persons and for all purposes.

- (10) A financing statement whose effectiveness was terminated under subsection (4) of this section and has been reinstated under subsection (8) of this section shall not be effective as against a person that purchased the collateral in good faith between the time the termination statement was filed and the time of the filing of the amendment reinstating the financing statement, to the extent that the person gave new value in reliance on the termination statement.
- (11) (a) A person who violates subsection (1) of this section shall be civilly liable to an injured qualified person for:
 - 1. Actual damages caused by the violation;
 - 2. Reasonable attorney fees; and
 - 3. Exemplary damages in an amount determined by the court.(b) Civil damages under paragraph (a) of this subsection are in addition to any recovery to which the qualified person is entitled under KRS 355.9-625, or under law other than this article.
- (12) Neither the filing office nor any of its employees shall be subject to liability for the termination or amendment of a financing statement in the lawful performance of the duties of the office under this section.
- (13) A person may not file an affidavit under this section with respect to a financing statement filed by a financial institution, as defined in subsection (15) of this section or a representative of a financial institution.
- (14) In this section, the term "qualified person" means an individual who, at the time the financing statement referred to in subsection (2) of this section was filed or within five (5) years prior to the time of filing, was:
 - (a) An elected or appointed official of this state or a governmental unit of this state as defined in KRS 355.9-102(1);
 - (b) An officer or employee of a federal, state, or local judicial or prosecutorial office;
 - (c) An officer or employee of a federal, state, or local law enforcement office, including a correctional officer or employee; or
 - (d) An officer or employee of an office designated in KRS 355.9-501 as a place to file a financing statement.
- (15) In this section, the term "financial institution" means a person that:
 - (a) Is in the business of extending credit and servicing loans, including acquiring, purchasing, selling, and brokering, or other extensions of credit; and
 - (b) Where applicable, holds whatever license, charter, or registration that is required to engage in such business.

The term includes banks, savings banks, savings associations, building and loan associations, credit unions, consumer and commercial finance companies, industrial banks, industrial loan companies, insurance companies, investment companies,

installment sellers, mortgage servicers, sales finance companies, and leasing companies.

Effective: July 12, 2012

History: Created 2012 Ky. Acts ch. 132, sec. 82, effective July 12, 2012.

Legislative Research Commission Note (7/12/2012). In 2010, the National Conference of Commissioners on Uniform State Laws and the American Law Institute proposed a Uniform Act for adoption by the states that contained revisions to Article 9 of the Uniform Commercial Code. The effective date for all proposed Article 9 revisions was to be July 1, 2013. Those revisions were enacted in 2012 Ky. Acts Chapter 132, Sections 60 to 99. Sections 60 to 90 contained the substantive Article 9 revisions, and Sections 91 to 99 contained the transitional Article 9 revisions created to handle secured transactions made prior to July 1, 2013. Section 91 of that Act (codified as KRS 355.9-801) and Section 102 of that Act (a noncodified effective date provision) both stated, "Sections 91 to 99 of this Act take effect July 1, 2013." The normal effective date for legislation enacted at the 2012 Regular Session of the General Assembly is July 12, 2012. In Opinion of the Attorney General 12-010, issued July 3, 2012, Section 91 (codified as KRS 355.9-801) was determined to have contained a manifest clerical error, and should have instead read, "Sections 60 to 90 of this Act take effect July 1, 2013," thereby making the substantive Article 9 revisions effective on the same date as the transitional Article 9 provisions in conformity with the 2010 Uniform Act proposal and 2012 Ky. Acts Chapter 132, Section 102. This statute was one of the substantive provisions of Article 9 contained in 2012 Ky. Acts Chapter 132, Sections 60 to 90.